Midwest Bankcentre, Inc., 398 F.3d 1011, 1017 (8th Cir. 2005). Respondents' citation to *Strate* is misleading because the Eighth Circuit had already adopted the crux of *Desert Palace* before that Opinion was issued, as recognized by the Eighth Circuit in the very case upon which Respondents rely:

> our cases utilizing the *McDonnell Douglas* methodology at the summary judgment stage are, in principle, consistent with *Desert Palace*. Contrary to *Strate's* apparent understanding of the law, *we have long recognized* that a genuine issue of fact regarding unlawful employment discrimination may exist notwithstanding the plaintiff's inability to directly disprove the defendant's proffered reason for the adverse employment action.

Strate, 398 F.3d at 1017-18 (emphasis added). Unlike the Eighth Circuit, however, the Eleventh Circuit has expressly rejected the proposition that a genuine issue of fact regarding unlawful employment discrimination may exist notwithstanding the plaintiff's inability to disprove the defendant's proffered reason for the adverse employment action. In fact, where the defendant proffers multiple reasons for the adverse employment action, the Eleventh Circuit requires the plaintiff to disprove *each* proferred reason to avoid summary judgment. *Chapman v. AI Transp.*, 229 F.3d 1012, 1024-25 (11th Cir. 2000) (*en banc*). *See* Pet. App. 49a (same holding). Thus, while *Desert Palace* may not have changed the summary judgment standard in the Eighth Circuit because that Circuit's standard was already "consistent with *Desert Palace*" (*Strate*, 398 F.3d at 1017), *Desert Palace* is facially *in*consistent with the summary judgment standard in the Eleventh Circuit. Thus, without regard to whether the split resulted from *Desert Palace*, the post-*Desert Palace* summary judgment standard is entirely different in the

Eighth Circuit than the Eleventh Circuit, reflecting the circuit split that should be resolved by this Court.

Finally, Respondents argue that the application of the *Desert Palace* paradigm would not change the outcome of this case because "petitioners have never proffered a shred of evidence that race was a motivating factor in any of the employment decisions at issue. Indeed, Petitioners have made no effort to point to any such evidence in the record." Resp. Br. at 28. This assertion is patently incorrect. The evidence is discussed in Pet. 1-2, 4-6, 26, 26 n.12, and throughout the appendix. In fact, the District Court held that six of seven of the individual plaintiffs established a *prima facie* case, but granted summary judgment based on the alleged failure to prove pretext – the very thing Petitioners would have no burden to do under *Desert Palace*.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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